

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Steven T. Rosenberg                      Art Unit : 3714  
Serial No. : 10/619,068                              Examiner : Pandya, Sunit  
Filed : July 11, 2003                                  Confirmation No.: 5908  
Title : IMAGE-BASED CONTROL OF VIDEO GAMES

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO ELECTION REQUIREMENT

In the Office action dated December 18, 2006, the Examiner has indicated that an election is required between the asserted "species" of FIGS. 1-3 and FIGS. 4-5. In response to this election requirement, applicant provisionally elects the "species" of FIGS. 4 and 5, with traverse. Claims 13-24 read on the elected "species."

The election requirement is traversed because the Examiner is not authorized to require the proposed election of species. In particular, 37 CFR 1.146, which authorizes the Examiner to require an election of species, applies only to "an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby." The instant application, however, currently does not contain a generic claim that embraces all the embodiments shown in FIGS. 1-5. Without such a generic claim, the embodiments of FIGS. 1-3 and the embodiments of FIGS. 4 and 5 do not constitute "species" to which the claims properly can be restricted under 37 CFR 1.146 (see MPEP § 806.04).

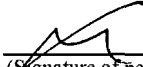
For these reasons, Applicants request that the Examiner reconsider and withdraw the election requirement.

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CERTIFICATE OF TRANSMISSION

I hereby certify that this document is being transmitted to the Patent and Trademark Office via electronic filing.

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Attorney's Docket No.: 100202494-1  
Reponse dated Jan. 18, 2007  
Reply to Office action dated Dec. 18, 2006

Respectfully submitted,

Date: January 18, 2007



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